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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/893,803	06/28/2001	Bharath Rangarajan	F0660	7099
7590 10/20/2003				
Himanshu S. Amin Amin & Turocy, LLP National City Center 1900 E. 9th Street, 24th Floor Cleveland, OH 44114				
EXAMINER ROSENBERGER, RICHARD A				
ART UNIT 2877		PAPER NUMBER		

DATE MAILED: 10/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action**Application No.**

09/893,803

Applicant(s)

RANGARAJAN ET AL.

Examiner

Richard A Rosenberger

Art Unit

2877

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 14 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

- 1 ☒ A Notice of Appeal was filed on 14 August 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
- 2 ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

- 3 ☐ Applicant's reply has overcome the following rejection(s): _____.
- 4 ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
- 5 ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached comments.
- 6 ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
- 7 ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

- 8 ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
- 9 ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
- 10 ☐ Other: _____

1. The remarks filed 14 August 2003 have been considered.
2. The restriction and withdrawal from consideration of claim 30 is maintained for the reasons set forth in previous office actions. Claim 30 is of a scope so different from the originally presented claims that restriction is warranted.
3. The Remarks argue that Ausschnitt uses a test pattern for his measurements. This is of course correct. However, the instant independent claim 1 does not distinguish over the use of a test pattern; it calls only for directing light onto the wafer and measuring light reflected from the wafer, as the test pattern is on the wafer, the optical measurements thereof require directing light onto the wafer and measuring light from the wafer. Thus the rejection of claim 1 cannot be overcome by this argument.

Independent claims 8 and 13 call for etching a device on at least one portion the wafer, and directing light onto the at least one portion. It does not say that light is directed to the device, but only onto the at least one portion of the wafer on which the device has been formed. As clearly shown in figure 10 of the Ausschnitt reference, the test patterns are directly adjacent the device being formed, and thus on the at least one portion of the wafer on which the device is formed.

Independent claims 12 and 14 call for etching a "feature" on the wafer, and measuring the feature. A test pattern as shown by Ausschnitt is a "feature".

Independent claims 15, 25, and 29 call only for detecting parameters of the etching device, which is exactly what the test patterns of Ausschnitt are intended, and used, for.

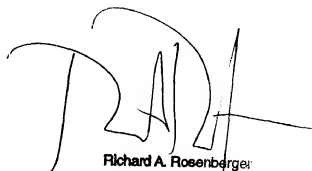
Thus the fact that Ausschnitt uses a test pattern cannot be used to distinguish what is claimed over the prior art because the instant claims are all written in such a way as to allow the claimed measurement to be made on a test pattern. Unclaimed subject matter cannot be used to distinguish over the art; the fact that narrower claims could have been presented that would distinguish over the art does not mean that broader claims that do not so distinguish can be allowed.

4. Papers related to this application may be submitted to Group 2800 by facsimile transmission. The faxing of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (15 November 1989). The fax number is (703) 872-9306

Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. A. Rosenberger whose telephone number is (703) 308-4804.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0956.

R. A. Rosenberger
9 October 2003



Richard A. Rosenberger
Primary Examiner